Supreme Court, U.S.
FILED

No. 931205 JAN 25 1994

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

DUANE J. TILLIMON,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO

PETITIONER'S APPENDIX

John G. Rust
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Toledo, Ohio 43612
(419) 476-0347

Attorney for Petitioner

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John G. Rust, Counsel for Petitioner hereby certifies that he, January 25, 1994, served three (3) copies of the foregoing Appendix on Daniel R. Pilrose, Esq., City Prosecutor's Office, 555 N. Erie Street, Toledo, Ohio 43624 by U.S. Mail, First Class, Postage Prepaid.

Respectfully submitted,

John G. Rust
Attorney for Petitioner

THE SUPREME COURT OF OHIO

1993 TERM

To wit: October 27, 1993

State of Ohio
Appellee,

: Case No. 93-1192

: REHEARING ENTRY

v.

: (Lucas County)

Duane J. Tillimon,
Appellant.

IT IS ORDERED by the Court that rehearing in this case be, and the same is hereby, denied.

(Court of Appeals Nos. L91432 & L91433)

(S)
THOMAS J. MOYER
Chief Justice

THE SUPREME COURT OF OHIO

1993 TERM

To wit: September 22, 1993

State of Ohio : Case No. 93-1192
Appellee,
: E N T R Y
v.
:
Duane J. Tillimon,
Appellant. :

Upon consideration of the motion for an order directing the Court of Appeals for Lucas County to certify its record, and the claimed appeal as of right from said court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, $40.00, paid by John Rust.

(Court of Appeals Nos. L91432 & L91433)

(S)
THOMAS J. MOYER
Chief Justice

APP. P. 2

IN THE COURT OF APPEALS
OF LUCAS COUNTY

City of Toledo — Filed: Apr. 9, 1993

Appellee — Court of Appeals No. L-91-433

v.

Trial Court No.
Duane J. Tillimon — CRB 91-08520

Appellant — DECISION AND JUDGMENT ENTRY

Decided: April 9, 1993

* * * * * * *

Daniel Pilrose, for appellee.

John Rust, for appellant.

* * * * * * *

This is an appeal from a judgment and sentence of the Toledo Municipal Court wherein, appellant Duane J. Tillimon, was found quilty of interfering with the custody of a child in violation of R.C. 2919.23(A)(1) and guilty of violating a state peace bond in violation of R.C. 2933.22. The procedural history of this case began when a private complainant, Debra Jankowski, filed two

complaints against appellant. On May 2, 1991, a complaint alleging a failure to keep the peace, a violation of R.C. 2933.02, was initiated by Debra Jankowski against appellant. On May 15, 1991, a complaint alleging an interference with custody, a violation of R.C. 2919.23(A)(1), was iniated by Debra Jankowski against appellant.

On July 2, 1991, appellant appeared in Toledo Municipal Court and entered a plea of not guilty to both charges. On July 22, 1991 appellant appeared with counsel and requested a trial by jury for both charges. The jury demand was granted for the interference with custody charge in violation of R.C. 2919.23(A)(1) and both charges were continued for trial. The case proceeded to trial on October 17, 1991. The R.C. 2919.23(A)(1) violation was tried to a jury and the R.C.

2933.02 violation was tried to the court. At the close of the trial, the jury found appellant quilty of R.C. 2919.23 (A)(1); and the court found appellant quilty of R.C. 2933.02. Both matters were referred to probation for a pre-sentence report.

On November 4, 1991 appellant filed a motion for acquittal and a motion for a new trial. On November 20, 1991 the prosecutor filed a written response to appellant's motions. On November 26, the trial court denied appellant's motion for acquittal and motion for a new trial. The trial court then sentenced appellant to a jail term of sixty days, thirty days to be suspended on appellant's future good behavior and on the condition that appellant engage in, attend, and complete psychological counseling as mandated by the probation

department. In addition, the court ordered appellant to execute a peace bond in the sum of $500, qualifications waived, for a period of one year and to pay the costs of both actions. The trial court granted appellant's request to stay the execution of the sentence pending the filing of an appeal bond in the sum of $400 with ten percent allowed. The judgment was file-stamped on November 27, 1991, and a notice of appeal was file-stamped on December 26, 1991. Appellant raises six assignments of error for our consideration which read:

"ASSIGNMENT OF ERROR I
THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN NOT ALLOWING DEFENDANT TO INTRODUCE VARIOUS EVIDENCES SHOWING THAT HE DID VARIOUS ACTS WHICH WOULD NOT HAVE BEEN DONE BY A PERSON GUILTY OF ENTICING A MINOR GIRL.

"ASSIGNMENT OF ERROR II
THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN NOT ALLOWING DEFENDANT TO INTRODUCE EVIDENCES THAT THE STATE'S WITNESSES WENDI DURAIN AND MRS. DEBORAH

JANKOWSKI WERE FEARFUL OF FURTHER VIOLENCE BY MR. JANKOWSKI, AND THAT EACH HAD A MOTIVE TO TESTIFY FOR FINANCIAL OR OTHER GAIN.

"ASSIGNMENT OF ERROR III
REASONS
THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN NOT GRANTING, AMONG OTHER REASONS AND GROUNDS, A NEW TRIAL FOR THE PROSECUTORIAL ERROR IN NOT DISCLOSING TO DEFENDANT'S COUNSEL THE CRIME REPORT OF JUNE 24, 1992, MADE BY MRS. DEBORAH JANKOWSKI AS TO THE VIOLENCE BY MR. JANKOWSKI AGAINST THEIR TWO TWIN SONS, ALL IN THE PRESENCE OF WENDI DURAIN; AND FURTHER, IN NOT ALLOWING AT THE RESTRICTED HEARINGS ON THE MOTION FOR NEW TRIAL TO QUESTION MRS. JANKOWSKI AND THE PROSECUTOR ON THE EXCHANGE OF INFORMATION CONCERNING THE CRIME REPORT, AND ALL THAT MRS. JANKOWSKI HAD DISCLOSED TO THE PROSECUTOR ABOUT MR. JANKOWSKI'S TREATMENT OF THE FAMILY.

"ASSIGNMENT OF ERROR IV
THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN INSTRUCTING THE JURY THAT THE LATENESS OF THE DATE OF FILING OF THE INTERFERENCE WITH CUSTODY CHARGE, MAY 15, 1991, COULD NOT BE CONSIDERED BY THE JURY; AND LIKEWISE ERRED IN NOT ADVISING THE JURY THAT PROSECUTOR PILROSE SHOULD NOT HAVE ARGUED THAT MR. JANKOWSKI'S FATHER WAS NOT CALLED TO TESTIFY BECAUSE HE WAS DEAD, AND THAT DEFENSE COULSEL IS NOT TO BE CRITICIZED BECAUSE HE DID: AND IN NOT INSTRUCTING JURY THAT, REGARDLESS OF

THEIR VIEWS OF GUILT, THAT THE JURY COULD IN THEIR DISCRETION FIND MR. TILLIMON NOT GUILTY.

"ASSIGNMENT OF ERROR V
THE TRIAL COURT PREJUDICIALLY ERRED IN ALLOWING A MATERIAL VARIANCE IN THE PROOF OF THE PEACE BOND CHARGE, WHEN THE PROSECUTOR WAS ALLOWED TO INTRODUCE EVIDENCE THAT MR. TILLIMON HAD HIRED A COUPLE OF MEN TO KILL OR HARM HER.

"ASSIGNMENT OF ERROR VI
THE TRIAL COURT COMMITTED PREJUDICIAL AND UNCONSTITUTIONAL ERROR IN DENYING DEFENDANT A FAIR TRIAL: AND ALSO IN DENYING DEFENDANT'S MOTION FOR A NEW TRIAL AND ACQUITTAL, BY REASON OF ALL THAT HAS HAPPENED, INCLUDING ALL THE ERRORS AND DENIALS OF RIGHTS HEREIN HERETOFORE CLAIMED AND ARGUED, AND ALSO INCLUDING, WITHOUT EXCLUDING OTHER ERRORS AND DENIALS, THE FOLLOWING:

"A. In Court statements and rulings which the Jury could take, and did take, as in fact criticism of the Defendant's Counsel, with the implication that somehow Defendant's Counsel was not preferred, but that the Prosecutor was, regardless of what the intent of the Trial Court Judge was;
"B. In ruling on evidence which denied important rights of Defendant, and prevented him from being fully and adequately to follow up and through on relevant, legal, points of inquiry;

"C. In denying Defendant's Motion for a Mistrial after the Prosecutor moved for one, apparently on the grounds that when Defendant and his Counsel conferred, that their voices were so loud as to be heard by the Jurors;
"D. In prosecutor asking, without cause or prior demonstration of need therefore, lending questions to aid the witnesses so as to prevent the state's witnesses from otherwise disclosing vulnerable and weak, if not critical, parts of their testimony if not lead;"

Assignments of Error Nos. I and II are similar as they assert that the trial court erred in excluding certain items of evidence. Specifically, in his first assignment of error, appellant argues that the trial court erred in not granting a Civ.R. 35 motion for the physical and mental examination of Wendi Durain filed by appellant. In his motion, appellant requested that the court, a doctor, and the Lucas County Board of Children Services investigate Wendi Durain, the minor daughter of complain-

ant Debra Jankowski, whose custody, complainant alleges, appellant interfered with in violation of R.C. 2919.23 (A)(1). In addition, appellant argues that the trial court erred in not admitting a letter written by the appellant to the Ohio Division of Real Estate, wherein appellant requested that the state investigate the allegations made against him by a third party. Specifically, in his second assignment of error, appellant argues that the trial court erred in not admitting evidence of a police report filed by Debra Jankowski against her husband, Thomas Jankowski, wherein she allegedly complained of domestic violence.

When considering the admissibility of evidence, it is well established that "[t]he trial court has broad discretion in the admission and exclusion of

evidence and unless it has clearly abused its discretion and the defendant has been materially prejudiced thereby, this court should be slow to interfere." State v. Hymore (1967), 9 Ohio St.2d 122, 128, 224 N.E. 2d 126, certiorari denied (1968), 390 U.S. 1024. An abuse of discretion "connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." State v. Adams (1980), 62 Ohio St.2d 151, 157.

In this case, pursuant to appellant's request, the trial court ordered the Lucas county Children Services Board to turn over any records pertaining to appellant's request for an investigation of the physical and mental capabilities of Wendi Durain and any alleged past physical abuse of Wendi Durain for an in camera inspection. An attorney for

the Lucas County Children Services Board produced the records for the court pursuant to the court order. The records showed that the Children Services Board received the request, the intake department deemed the request unfounded, therefore, an investigation was never made by the Children Services Board. The court then heard arguments of appellant's counsel, outside the presence of the jury, to determine the relevancy of such evidence. The trial court ruled the records inadmissible because they were not relevant to appellant's criminal case. In addition, the trial court found the letter written to the Ohio Division of Real Estate inadmissible. The court reasoned that the contents of the letter were not relevant to appellant's criminal case. Further, with respect to appellant's second assignment of error, the trial

court allowed appellant to elicit testimony from Debra Jankowski on cross-examination regarding a police report she had filed for domestic violence.

We have carefully reviewed the record and find that the trial court did not abuse its discretion when it found that the evidence sought pursuant to the Rule-35 motion and the letter written by appellant to the Ohio Division of Real Estate was irrelevant. In addition, we find the trial court properly excluded the police report as this evidence was inadmissible hearsay. Therefore, the trial court did not err in excluding the aforementioned evidence at trial. Accordingly, we find appellant's first and second assignments of error not well-taken.

In his third assignment of error, appellant asserts that the trial court

committed prejudicial error when it denied appellant's motion for a new trial. In support of his third assignment of error, appellant first argues that his motion for a new trial should have been granted because the trial court erred in edcluding the records of the Lucas County Children Services Board from evidence. The arguments in support of admissibility of the records advanced by appellant are essentially the same as those advanced in his first assignment of error. For the reasons set forth in appellant's first assignment of error, we find that the trial court properly excluded the Lucas County Children Services Board records from evidence.

Next, appellant argues that his motion for a new trial should have been granted because the city of Toledo

failed to inform appellant of a crime report wherein Debra Jankowski alleged that her husband, Thomas Jankowski, committed acts of domestic violence. Appellee contends that appellant was not entitled to the disclosure of such report because it involved an unrelated incident between Debra and Thomas Jankowski and was not exculpatory towards appellant. Appellee further contends that, even if appellant filed a motion for discovery pursuant to Crim.R. 16, the report would not have been subject to disclosure. Crim.R. 16(B)(1) requires a city prosecutor "to disclose to counsel for the defendant all evidence, *** favorable to the defendant and material either to guilt or punishment." Whether Thomas Jankowski committed acts of domestic violence is not favorable to appellant or is it material to appellant's guilt.

This report is not relevant to appellant's case; therefore, even if the report had been disclosed to appellant, it would not have been admissible at trial. Accordingly, appellant's third assignment of error is not well-taken.

Inhis fourth assignment of error, appellant asserts that the trial court committed reversible error by not instructing the jury that the complaint alleged against appellant was filed nine months after the alleged interference with custody occurred; and, by not instructing the jury that the city prosecutor made a statement in his closing argument that was not in evidence; and, by not instructing the jury that, even if they believed that appellate was guilty, they could still acquit him. Appellant's arguments are without merit.

First, appellant argues that the

trial judge should-have instructed the jury that the complaint was filed nine months after the allegee interference with custody occurred. The evidence presented at trial established that the alleged interference with custody occurred on August 17, 1990. In addition, the trial judge, in her instructions to the hurym told the jury that it was stipulated by and between the parties that the complaint was filed on May 15, 1991. She further stated that the date of the alleged interference wotj custody occurred on August 17, 1990. Therefore, the jury knew the complaint was filed nine months after the alleged interference with custody occurred. There was no need to further instruct the jury on evidence already within their consideration.

Second, appellant argues that the trial judge failed to instruct the jury

that the city prosecutor made a statement in his closing argument that was not in evidence; namely, that Thomas Jankowski's father had died. The trial judge instructed the jury as to the evidence they were to consider in determining appellant's guilt or innocence. The trial judge, in accordance with Ohio Jury Instruction 405.10 correctly instructed the jury that the evidence does not contain the complaint, opening or closing arguments of counsel, or any other statement made by counsel during trial. Third, appellant argues that the trial judge ahould have instructed the jury that, even if they believed that appellant was quilty, they could still acquit him. This argument is without merit.

We have reviewed the record and find that the trial judge properly instructed

the jury in this case. Accordingly, appellant's fourth assignment of error is not well-taken.

In his fifth assignment of error, appellant asserts that the trial court committed prejudicial error when it allowed the city to introduce evidence that materially varied with the peace bond charge. Appellant's argument is without merit.

In this case, the complainant, Debra Jankowski, testified as to why she feared appellant would cause her physical harm. Her testimony did not materially vary from what she allegee in her complaint; in fact, her testimony was, in part, verbatim as to the wording of the complaint. As appellee correctly points out, Crim.R. 3 merely requires that a complaint state "the essential facts constituting the offense charged." There

is no law that requires appellant to be informed of all of the specific facts the city will rely upon to sustain its burden of proving appellant guilty beyond a reasonable doubt. Accordingly, appellant's fifth assignment of error is not well-taken.

In his sixth assignment of error, appellant asserts that the trial court committee prejudicial error in denying appellant's right to a fair trial and in denying appellant's motion for a new trial ane judgment of acquittal. In support of his sixth assignment of error, appellant advances several different arguments. First, appellant argues that the trial judge's statements in court led the jury to believe counsel for appellant was being criticized and that she preferred the city prosecutor over counsel for appellant. Second, appellant again

argues that the trial judge improperly ruled as to the admission and exclusion of evidence. Third, appellant argues that the trial court erred when it denied appellant's motion for a mistrial because the jury could hear appellant and his counsel conversing at trial. Finally, appellant argues that the trial judge improperly allowed the city to ask leading questions of its witnesses. Appellant contends that, based on the foregoing errors, appellant was denied his right to a fair trial and is therefore entitled to a new trial. Before turning to this contention, we first consider appellant's argument that the trial court erred in denying appellant's motion for acquittal.

Pursuant to Crim.R. 29(A), "[t]he court, ***shall order the entry of a judgment of acquittal of one or more offenses charged in the ***complaint, if

the evidence is insufficient to sustain a conviction of such offense or offenses." We have reviewed the record and find that the evidence was sufficient to sustain appellant's conviction for violating a state peace bond in violation of R.C. 2933.02, and for interfering with the custody of a child in violation of R.C. 2919.23(A)(1); therefore, the trial court did not eerr when it denied appellant's motion for acquittal. We now turn to appellant's arguments in support of his motion for a new trial.

Pursuant to Crim.R. 33, appellant may be granted a new trial if his substantial rights have been materially affected. Crim.R. 33(A) reads in pertinent part:

> "A new trial may be granted *** for ***: (1) [i]rregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented

> from having a fair trial; (2) [m]isconduct of the jury, prosecuting attorney, or the witnesses for the state;***"

We ahve previously ruled, in appellant's first and second assignments of error, that the trial court did not abuse its discretion when it excluded on the basis of relevancy. Appellant's remaining arguments do not substantiate his claim that he was denied a fair trial.

First, when considering the conduct of a trial court judge, "[i]t is well established that a trial judge must at all times be impartial and refrain from comments which might influence the jury." State v. Boyd.(1989), 63 Ohio App. 3d 790, 794. We have carefully considered appellant's specific allegations, along with the entire record, and can find nothing in the record to support such allegations. The trial judge made no statement

that the jury could interpret as being critical of appellant's counsel. In addition, we find that the statements made by the trial judge did not in any way convey to the jury and partiality on the part of the trial judge.

Next, the trial judge denied the city's motion for a mistrial because she found that the substantive rights of the defendant and the prosecution were not prejudicially affected by one statement. The motion was made on behalf of the city after the trial judge, outside the presence of the jury, informed counsel that she heard appellant make a comment to his counsel about a witness for the city that could, if heard by the jury, taint the partiality of the jury. Appellant now argues that he was materially prejudiced by his own misconduct; therefore, his motion for a mistrial

should have been granted. Appellant is incorrect. The trial judge properly denied the city's motion for a mistrial.

Finally, the trial judge sustained each objection made by appellant to the leading questions asked by the city to its witnesses.

WE have carefully considered each of appellant's arguments, along with the entire record, and do not find that appellant was denied his right to a fair and impartial trial. Accordingly, appellant's sixth assignment of error is not well-taken.

The jdugment of the Toledo Municipal Court is affirmed. This cause is remanded for edecution of sentence. Appellant is ordered to pay the court costs of this appeal.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R.4, amended 1/1/80.

Peter M. Handwork, J. (S) _____
JUDGE

Charles D. Abood, J. (S) _____
JUDGE

James R. Sherck, J. (S) _____
CONCUR. JUDGE

IN THE COURT OF APPEALS OF

LUCAS COUNTY, OHIO

Filed: June 9, 1989

City of Toledo — Court of Appeals No. L-91-432

Appellee

v. Duane J. Tillimon — Trial Court No. CRB 91-07608

Appellant — Court of Appeals No. L-91-433

AND

City of Toledo — Trial Court No. CRB 91-08520

Appellee — DECISION AND JOURNAL ENTRY

v.

Duane J. Tillimon — Decided: Jan. 24, 1992

Appellant

* * * * *

This matter is before this court sua sponte.

Since the actions herein involve common questions of law and fact, it is hereby ordered that appeal Nos. L-91-432 and L-91-433 be consolidated under appeal No. L-91-433 for purposes of this appeal pursuant to App. R. 3(B). All motions,

briefs, and arguments shall proceed pursuant to the Appellate Rules as if originally filed in appeal No. L-91-433.

Peter M. Handwork, P.J.

PRESIDING JUDGE

IN THE MUNICIPAL COURT OF TOLEDO,
LUCAS COUNTY, OHIO

State of Ohio * Case No. CRB-01-07608
and CRB-91-08520

Plaintiff, *

JUDGE MARY GRACE
vs. * TRIMBOLI

Duane J. Tillimon, * JOURNAL ENTRY

Defendant. * Filed: Nov. 27, 1991

This matter is begore the Court for sentencing. On October 14, 1991, a jury convicted the Defendant of Interference with Custody, a misdemeanor in the third degree. Simultaneously, a charge of Violation of State Peace was tried to the Court. This Court found the Defendant guilty of that minor misdemeanor charge as well. Both matters were referred to probation for a presentence report.

On November 4, 1991, Defendant, through counsel, filed a Motion for Acquittal and a New Trial, along with a Memorandum in Support Thereof. A Supple-

mental Memorandum in Support was filed November 20, 1991. The prosecutor filed its written response to same on November 20, 1991.

Upon due consideration of the written memoranda and the oral arguments presented, the Court finds Defendant's Motion not well taken and hereby denies same.

Prior to sentencing, defense counsel was given an opportunity to make statements to the Court.

Upon due consideration of counsel's statements, along with a review of the Probation Presentence Report, this Court enters the following sentence: Relative to the charge of Interference with Custody, Defendant is sentenced to serve 60 days at the Corrections Commission of Northwest Ohio; 30 days to be suspended on Defendant's future good behavior and on the condition Defendant engage, attend,

and complete psychological counseling as mandated by Probation. Defendant to be placed on one year active probation. Relative to the charge ov Violation of State Peace, Defendant ordered to execute a peace bond in the sum of $500.00, qualifications waived for a period of one year. Defendant is also ordered to pay costs of both actions.

Upon request of Defendant, this sentence is hereby stayed pending filing of an appeal bond by November 27, 1991, in the sum of $400.00, ten percent (10%) allowed.

JUDGE MARY GRACE TRIMBOLI

November 27, 1991
DATE

IN THE MUNICIPAL COURT OF TOLEDO,

LUCAS COUNTY, OHIO

City of Toledo, * Case No. CRB 91-08520

Plaintiff, * Judge Mary Grace Trimboli

v. *

ORDER

Duane Tillimon, *

Filed: Oct. 17, 1991

Defendant. *

This day this cause came before the Court upon the Motion to Quash Subpoena filed by Lucas County Children Services Board pursuant to a subpoena duces tecum served upon the Keeper of Records of Lucas County Children Services Board to produce any and all records involving the minor child, Wendy Burain or Thomas and Debra Jankowski.

Upon due consideration, the Court finds the motion not well taken and denies same.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Lucas County Children

Services Board produce for in-camera inspection by the Court any and all records involving the minor child, Wendy Durain or Thomas and Debra Jankowski, on or about May 28, 1991, excluding the identity of the referral source.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Keerer of the Records so ordered to be produced appear in Courtroom #11 of the Toledo Municipal Court at 8:30 a.m. on October 18, 1991, to verify said records or lack thereof.

(S)
JUDGE MARY GRACE TRIMBOLI

October 17, 1991
DATE

TOLEDO MUNICIPAL COURT ENTRIES
IN STATE v. TILLIMON, CRB 91-08520

TOLEDO MUNICIPAL COURT PROCEEDINGS

CASE NO. CRB91-08520 CHARGE: INTER-
FERENCE W/
CUSTODY

DEFENDANT DUANE J. TILLIMON
DATE ARRESTED/
SUMMONED

Affidavit Filed Defendant in Court

May 15, 1991:
Summons filed for 5/24/91,CtRm #4,
9:00 A.M.

May 24, 1991:
Case Called. Defendant failed to appear.
Bench Warrant to issue.Bond $500. Judge
Penn.

June 4, 1991:
Warrant Withdrawn. To Prosecutor to
schedule a pre-trial conference. Judge
Singer. Cont. to 7/2/91 at 9:00A.M. for
PRosecutor PRe-trial at request of de-
fendant Pro Se. Clerk to notify com-
plainant.

July 2, 1991: July 9, 1991:
Defendant pled Not Guilty. To Assign-
ment Commissioner to set for trial.
Clerk to notify defendant as to trial
date P.O. Box 8762,Toledo, Ohio 43623.
On Court's motion case consolidated
with CRB91-07608. JUdge Roger Weiher.

July 15, 1991:
Case received in Assignment Commissioner. Motion for consolidation granted. Case consolidated with CRB91-07608. Case assigned to Judge Trimboli. Case set for hearing 7/22/91,Ctrm. #11,1:30 P.M. Complainant notified by regular mail.

July 17, 1991:
Jury Demand and demand for separate trials filed by defendant Pro Se.

July 19, 1991:
Motion for continuance filed by defendant Pro Se.

7/22/91:
Mr. Rust enters appearance. Jury demand filed and granted. Case re-set for hearing on 9/26/91 in Ctrm#11. Trial to jury of 8. Defendant waives time OrC 2945.71.

8/1/91:
Motion to quash by Atty.McLaughlin (LCCSB)

9/26/91:
To Assignment Commissioner for new jury trial date. Defendant waives time. Case re-set for trial 1/17/91 in Ctrm#11 at 9:00 A.M. Trial to jury of 8. Clerk to notify witnesses.

10/15/91:
PRe-trial held.Jury called for 10/18/91. Proposed jury instructions to be given to Court by close of business day 10/16/91.Judge Trimboli.

10/17/91:
Case called. Jury trial commenced. Continuing to 10/18/91.

10/18/91:
Motion to quash denied. See Order Enclosed.

10/21/91:
Trial concluded this date. Jury finding of Guilty made. To Probation for presentence investigation. Judge Mary G. Trimboli. Continued to 11/22/91 for sentencing per Probation Department at 9:00 A.M. Defendant notified.

11/4/91:
Motion for Acquittal and motion for a new trial with memorandum in support by Attorney Rust.

11/6/91:
PRosecutor has until 11/20/91 to respond to defendant's motion. Clerk to present motion to court on 11/20/91 for decision. See Journal Entry.Judge Trimboli.

11/19/91:
Defendant's motion for oral hearing on motion for acquittal and production of CSB records filed by Attorney Rust.

11/20/91:
Response to Motion for Acquittal filed by Pros. Pilrose. Case continued to 11/26/91,Ctrm #11,1:30 P.M.

11/25/91:
Defendant's supplemental memorandum in support of motion for new trial and

acquittal filed by Attorney Rust.

11/26/91:
Motion for new trial denied.See Journal Entry enclosed. Defendant sentenced to 60 days Correctional Center of Northwest Ohio. 30 days suspended on good behavior and on condition defendant complete psychological counseling as mandated by the Probation Department. One year active probation. Sentence stayed pending filing of appeal bond by 11/27/91 of $400 @10% judge Mary G. Trimboli.

11/27/91:
Journal Entry filed with Clerk's Office. Appeal bond posted by defendant.

12/26/91:
Notice of Appeal and Praecipe filed by Attorney Rust.

2/3/92:
Motion for extension of time filed and granted. Continue to 3/4/92 for filing of transcript. Judge Trimboli.

Journal No. 432 Page No. 464,65,70
Case No. CRB91-06520

State of Onio
Plaintiff

vs.

Duane Tillimon
Defendant.

Judge: Mary G. Trimboli
Prosecutor: Daniel Pilrose
James Holzemer
Clerk of Court: Harry Kessler
Attorney for Defendant: John Rust/ pro se

Plea: Not Guilty Charge: Interference w/Custody

SUPPLEMENTAL ENTRIES FOR APPEAL FILED 11/29/93

Affidavit Filed Defendant in Court

5/10/93 Mandate Returned. Decision of Toledo Municipal Court is affirmed. This cause is remanded for execution of sentence. Appellant is ordered to pay the costs of this appeal.
Clerk to notify Defendant and Attorney Rust to appear 5/27/93 at 9:00A.M. in Ctrm#11 for execution of sentence. Judge Mary G. Trimboli

5/27/93 Case continued to 8/16/93, #11, 9:00 A.M.

5/25/93 Motion for stay on execution of sentence pending appeal to Ohio Supreme Ct.

BEST AVAILABLE COPY

SUPPLEMENTAL ENTRIES FOR APPEAL FILED
11/29/93
Continued from Page #]

8/18/93	Stay continued to 10/20/93 pending Appeal.
10/20/93	Clerk to issue notice for appearance 20/39/93, Ctrm. #11, 9:00 A.M.
10/28/93	Motion for new trial and stay on execution of sentence by Attorney Rust.
10/29/93	Motion for new trial denied. Motion for stay denied. Sentence ordered enforced as to 30 days. Costs stayed to previous review date. Bring Order from CCNO to issue for 11/3/93. Upon request of Probation Officer, case is continued to 11/9/93.
11/ 4/93	Copy of Rehearing Entry rec'd from the Supreme Court of Ohio.

SUPPLEMENTAL ENTRIES FOR APPEAL FILED
11/29/93

Continued

Affidavit Filed Defendant in Court

11/9/93 Defendant in Custody. Clerk to issue Bring Bank Order for Sheriff to convey defendant to T.M.C. Case continued to 11/17/93, Ctrm #11, 9:00 A.M.

11/17/93 Request for early release is denied. Referred to Probation to set up counseling sessions. Judge M. Trimboli Probation to continue.

]]/29/93 Notice of appeal filed by defendant Pro Se. (copies to appeal clerk)

State of Ohio)
Lucas County) ss Margaret Thurber

I, Margaret Thurber, Clerk of The Toledo Municipal Court, do hereby certify that the foregoing is a true and correct copy of the Journal Entry made in the above entitled cause as appears on record.

Given under my hand and seal of this Court this 20 day of December, 1993.

JAMES M. HOLZEMER, CLERK
TOLEDO MUNICIPAL COURT
By (S) M. Duffey Deputy

THE TOLEDO MUNICIPAL COURT
TOLEDO, LUCAS COUNTY, OHIO

COMPLAINT (SUMMON MAY 20 #4 9:00)

(Crim. R. 3, 4 and 9)

SS# _____

RID# _____

DOB 8/7/46 SEX M RACE W

HGT. _____

EYES _____ HAIR _____

Case No.CRB91-07608
STATE OF OHIO/CITY OF TOLEDO

Duane J. Tillimon
Name

5105 Tillimon
Address

Toledo, Ohio
City State Zip

☐ TMC ☐ ORC R.B. No. _____

Code No. 2933.02

Charge: PEACE BOND

Classification: M/M

(cont'd.)

Complainant being duly sworn states that Duane J. Tillimon defendant at Toledo, Lucas County, Ohio on or about 3/27/91 did violate ☐ TMC (or) ☒ ORC # 2933.02 constituting a charge of PEACE BOND

DO NOT WRITE IN THIS SPACE

in that defendant knowingly caused the affiant to have just cause to fear and the affiant does fear that defendant will cause physical harm, to wit:

(handwritten) The defendant threatened to "fuck up" affiant thereby causing her to fear for her safety.

Sworn to and subscribed before me by Debra K. Jankowski (S) on May 2, 1991.
Signature

Debra K. Jankowski
Complainant's Name

16 Van Buren, Toledo, Ohio
Address

(S) Margaret Buemeister (sp?)
Deputy Clerk
The Toledo Municipal Court

APP. P. 42

THE TOLEDO MUNICIPAL COURT
TOLEDO, LUCAS COUNTY, OHIO

COMPLAINT (Handwriting illegible)

(Crim. R, 3, 4 and 9)

W.M
DOB: 8/7/46
HT: 6'0"
WT: 170
Hair: Lt. Brn.

Case No. CRB91-08520
STATE OF OHIO/CITY OF TOLEDO

Duane J. Tillimon
Name

5105 Tillimon Ln.
Address

Toledo Ohio
City State Zip

☐ TMC (or) ☑ ORC R.B.No. 034049-91

Code No. 2919.23(A)(1)

Charge: Interference with Custody

Classification: Mis'd 3rd (illegible)

Complainant being duly sworn states that Duane Tillimon defendant at Toledo, Lucas County, Ohio on or about Aug. 17 1990 did violate ☐ TMC (or) ☑ ORC # 2919.23(A)(1) constituting a charge of interference with custody.

(cont'd.)

APP. P. 43

DO NOT WRITE IN THIS SPACE

(handwritten) Duane Tillimon knowing he was without privilege to do so or being reckless in that regard did entice a child under age (18) from her parents, to wit: Duane Tillimon attempted to entice Wendi Durain (age 8) to go to his house, contrary to ORC 2919.23(A)(1).

(S) Debra K. Jankowski
Signature

Debra Jankowski
Complainant's Name

16 Van Buren Ave.
Address

Sworn to and subscribed before me by (S) Debra K. Jankowski (above) on May 15, 1991.

(S) Margaret Buemeister (sp?)
Deputy Clerk
The Toledo Municipal Court

SECTIONS 1., and 5.,
FOURTEENTH AMENDMENT

"AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor denyto any person within its jurisdiction the equal protection of the laws."

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.
(Effective 1868)"

THE OHIO STATUTE ON WHICH PETITIONER WAS PROSECUTED; CITED AS ORC 2919.23, INTERFERENCE WITH CUSTODY:

§ 2919.23 Interference with custody.
(A) No person, knowing he is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor any of the following persons from his parent, guardian, or custodian:
(1) A child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one;
(2) A person committed by law to an institution for delinquent, unruly, reglected, abused, or dependent children;

(3) A person committed by law to an institution for the mentally ill or mentally retarded.

(B) No person shall aid, abet, induce, cause, or encourage a child or a ward of the juvenile court who has been committed to the custody of any person, department, or public or private institution to leave the custody of that person, department, or institution without legal consent.

(C) It is an affirmative defense to a charge of enticing or taking under division (A)(1) of this section, that the actor reasonably believed that his conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under his shelter, protection, or influence.

(D) Whoever violates this section is guilty of interference with custody. A violation of division (A) of this section is a misdemeanor of the third degree. A violation of division (B) of this section is a misdemeanor of the first degree. Each day of violation of division (B) of this section is a separate offense.

HISTORY: 134 v. H 511(Eff. 1-1-74); 136 v H 85 (Eff. 11-28-75; 141 v H349. Eff. 3-6-86)

OHIO'S PEACE BOND STATUTE CITED AS
OHIO REVISED CODE (ORC)

"2933.02 Complaint to keep the peace

When a complaint is made in writing and upon oath, filed with a municipal or county court or a mayor sitting as the judge of a mayor's court, and states that the complainant has jsut cause to fear and fears that another individual will commit an offense against the person or property of the complainant or his ward or child, a municipal or county court judge or mayor shall issue to the sheriff or to any other appropriate peace officer, as defined in section 2935.01 of the Revised Code, within the territorial jurisdiction of the court, a warrant in the name of the state that commands him forthwith to arrest and take the individual complained of before the court to answer the complaint.

HISTORY: 1986 H 412, eff. 3-17-87
1953 H 1; GC 13428-1"